IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3476 of 2002

with

SPECIAL CIVIL APPLICATION No 2020 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNION OF INDIA

Versus

MP SOLANKI

Appearance:

1. Special Civil Application No. 3476 of 2002
   MR UM SHASTRI for Petitioner No. 1
   MR TR MISHRA for Respondent No. 1
2. Special Civil Application No. 2020 of 2002
   MR TR MISHRA for Petitioner No. 1
   MR UM SHASTRI for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 09/08/2002

ORAL JUDGEMENT

In Special Civil Application No.3476 of 2002, this Court (Coram : R.M. Doshit, J.) has already issued rule returnable on 19.4.2002. In Special Civil Application No.2020 of 2002, Rule returnable today.

With the consent of the parties, the matters are heard today finally.

Special Civil Application No.3476 of 2002 is filed by the Union of India, challenging the Award passed by the Central Industrial Tribunal dated 18.8.2001 in Reference (ITC) No.73 of 1991. By the impugned Award, the reference of the respondent workman is partly allowed and the impugned order of compulsory retirement dated 27.7.1988 passed by the Railway Administration is quashed and set aside by the said Award and the concerned workman was reinstated on his original post, with 50% back wages.

So far as Special Civil Application No.2020 of 2002 is concerned, the same is filed by the concerned workman in so far as the workman was not awarded full back wages during the intervening period.

Since the points involved in both the petitions are common, the petitions are disposed of by the common order.

The Tribunal has found that the concerned workman had remained absent for certain period while in service. Under the circumstances, while exercising powers under Section 11-A of the I.D. Act, the Court came to the conclusion that considering the misconduct of the concerned workman, the punishment imposed is on an excessive side. It is found that so far as the penalty of compulsory retirement is concerned, the same is a "Major Penalty". The Tribunal also found in paragraph 13 of the Award that for imposing the said major penalty, proper procedure is not followed and the principles of natural justice are not complied with. Under these circumstances, the Labour Court passed the impugned order of reinstatement with 50% back wages.

In my view, so far as the order of reinstatement is concerned, the same is not required to be interfered with as the Tribunal has given cogent reasons in paragraphs 13 and 14 of the Award for ordering reinstatement. However, since the misconduct is proved,

this is not a case in which back wages could have been awarded, as, it is an admitted fact that the concerned workman remained absent without prior sanction. Under these circumstances, this is not a case in which any amount for back wages could have been given to the concerned employee. Mr.Shastri, who is appearing for the Union of India, has fairly stated that the Railway Administration is not having any objection to reinstate the petitioner and this matter is mainly filed on the question of payment of back wages, which is awarded by the Tribunal.

After hearing both the sides, I am of the opinion that the order of reinstatement is not required to be interfered with. So far as the award of back wages is concerned, it is modified and it is ordered that the concerned workman shall not be entitled to any back wages during the intervening period. The order of the Tribunal is accordingly modified to the aforesaid extent. The order of reinstatement passed by the Tribunal is maintained. However, the workman will not be entitled to any back wages for the intervening period. It is, however, clarified that from the date of the Award, the concerned workman is entitled to his regular salary. Whatever benefits which are required to be given to the concerned workman be paid within a period of two weeks from the date of receipt of the writ from this Court.

Accordingly, so far as Special Civil Application No.3476 of 2002 is concerned, the same is partly allowed. Rule is made absolute to the aforesaid extent, and order of reinstatement is confirmed and the order for payment of back wages is quashed and set aside.

So far as Special Civil Application No.2020 of 2002 is concerned, the same is dismissed. Rule is discharged with no order as to costs.

Writ of this order may be sent forthwith and the Advocate of the Railway Administration also may inform the authority for early compliance of this order.

(P.B. Majmudar, J.)

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(apj)